

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of STEPHON DEANDRE LEE
HOLMES, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED
February 23, 2006

Petitioner-Appellee,

v

GREIGROE HOLMES, a/k/a GREGORY
HOLMES, SR.,

No. 266101
Saginaw Circuit Court
Family Division
LC No. 03-028808-NA

Respondent-Appellant.

Before: Cooper, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to his child pursuant to MCL 712A.19b(3)(c)(i), (g), and (h). We affirm.¹

We review a trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding qualifies as clearly erroneous when a review of the entire record leaves this Court with the firm and definite conviction that the trial court made a mistake. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). To be clearly erroneous, a decision must be more than maybe or probably wrong. *Sours*, *supra* at 633. If the trial court determines that the petitioner has proven by clear and convincing evidence the existence of one or more statutory grounds for termination, the court must terminate the respondent's parental rights unless it finds from the record evidence that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). We review the trial court's determination regarding the child's best interests for clear error. *Id.* at 356-357.

¹ The trial court also terminated the parental rights of the child's mother. That portion of the trial court's decision is not at issue in this appeal.

We hold that the trial court did not clearly err by finding that petitioner proved by clear and convincing evidence the existence of one or more statutory grounds for the termination of respondent's parental rights to the child. Petitioner took custody of the child because respondent was incarcerated and because the child's mother was homeless and could not provide proper care for him. The evidence showed that respondent would be incarcerated for decades, and that although he wrote to the child, he was unable to provide any other type of support for the child. The trial court did not clearly err in finding that: 1) the conditions that led to adjudication continued to exist and were unlikely to be rectified within a reasonable time, MCL 712A.19b(3)(c)(i); 2) respondent failed to provide proper care and custody for the child and would be unable to do so within a reasonable time, MCL 712A.19b(3)(g); and 3) as a result of respondent's incarceration, the child would be deprived of a normal home for a period exceeding two years and respondent had not provided for the child's proper care and custody, MCL 712A.19b(3)(h). Furthermore, the trial court properly found that termination of respondent's parental rights did not clearly contravene the child's best interests. MCL 712A.19b(5).

A party to a termination proceeding has the right to have the effective assistance of counsel. The principles of effective assistance developed in the context of criminal cases apply by analogy in termination cases. *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2002). Respondent's assertion that counsel deprived him of effective assistance by failing to challenge the trial court's assertion of jurisdiction over the child is without merit. The trial court had jurisdiction over the child by virtue of its decision in previous proceedings pertaining to the child's mother. *Id.* at 202-206. Counsel was not required to advocate a meritless position.

Affirmed.

/s/ Jessica R. Cooper
/s/ Kathleen Johnson
/s/ Jane E. Markey